

## Beyond the Margins: How Zambian Courts Use Marginal Notes in Interpreting Statutes

By Sangwani Nyimbiri\*

It is widely accepted that the true meaning or interpretation of a provision in a statute is derived from the wording of the provision itself. It may be argued that a marginal note in a statute is not meant to interpret a provision. To be a substitute of a provision, as it were. It would, at best, be described as a mere summary or guide of what the import of a particular provision is. This view seems evident from the definition offered by the learned authors of Black's Law Dictionary<sup>1</sup> at page 986. They define a marginal note as being:

“A brief notation, in the nature of a subheading, placed in the margin of a printed statute to give a brief indication of the matters dealt with in the section or subsection beside which it appears.”

Bennion in his book, *Statutory Interpretation*<sup>2</sup> at page 175, seems to give the above meaning a bit more context and justification. He states that:

“A side note or marginal note to a section is part of the Act. It may be considered in construing the section or any other provision of the Act, provided due account is taken of the fact that its function is merely to serve as a brief, and therefore possibly inaccurate guide to the content of the section.”

---

\*LLB (UNZA), MScPLCR (UNZA), ASCZ, PGLD, MCIArb, CertMed). Sangwani is presently a Registrar of the High Court (Chambers) and Legal Research Assistant in the office of the Chief Justice of Zambia. He also serves as the Coordinator and Chief Executive Officer of the Southern and Eastern Africa Chief Justices' Forum (SEACJF).

<sup>1</sup> Bryan A. Garner in *Black's Law Dictionary 8<sup>th</sup> Edition* United States of America, Thomas West, 2007

<sup>2</sup> F.A.R. Bennion, *Statutory Interpretation*, London, Butterworths 1997.

Generally, the understanding of marginal notes, as explained by the learned authors, seems to resonate with the courts in Zambia. The Supreme Court in the case *Access Bank Financial Services Limited and Access Leasing Limited v. Bank of Zambia*<sup>3</sup> put the effect of marginal notes this way:

“From the outset we must state that we agree with the authorities cited by Counsel for the appellant on the effect of side-notes to a Section in an Act of Parliament[. They] have no legislative value and cannot be said to be enacted in the same sense as the long title or any part of the body of the Act.”

In the more recent case of *Hakainde Hichilema v. The Attorney General*<sup>4</sup>, the Supreme Court reaffirmed this position as follows:

“...our view, regardless of what the marginal notes may state, is that the true content of any enactment should be deciphered from the actual words used in the text of the provision.”

There may be looming questions at this point. What weight then should be placed on marginal notes, if at all, when interpreting statutes? Should a legislative drafter take care to properly and accurately craft marginal notes for the benefit of readers of statutes?

With regard to the question of weight placed on marginal notes when interpreting statutes, the Zambian courts seem to use the notes as interpretation aids. The courts, to a certain extent, use them to give full meaning to legislative provisions. The two cases below illustrate this point.

---

<sup>3</sup> SCZ Appeal No. 88 of 2003

<sup>4</sup> SCZ Appeal No. 4 of 2019

The Constitutional Court of Zambia in *Wang Shunxue v. Wang Qinghai and The Attorney General*<sup>5</sup> made the following observation:

“We therefore, find that the argument by the 2<sup>nd</sup> Respondent that section 89 of the CPC only deals with public prosecutors because it falls under the umbrella of a sub-heading titled 'appointment of public prosecutors and conduct of prosecution' is a serious misapprehension of the law. It is clear from the marginal note against section 89 that the provision also deals with permission to conduct prosecutions in general. If indeed it was the intention of the Legislature that the provision relate[s] only to public prosecutions, the same would have been expressly stated.”

The Court in the above case seemed to give full meaning to the provisions in question by making reference to the marginal note.

Similarly, the Court of Appeal of Zambia also employed the same approach in *Bank of Zambia v. Al Shams Building Materials, Jayesh Shah and the Attorney General*<sup>6</sup>. In this case, the Court of Appeal acknowledged marginal notes when they held that:

“The marginal note to the foregoing section reads: "Right of appeal in civil matters." This Section therefore confers the right of appeal to a dissatisfied party against a judgment of the court below.”

Clearly, the courts in Zambia do make reference to marginal notes when interpreting legislative provisions. It can, therefore, be argued that a legislative drafter must not slacken in their drafting skills when crafting marginal notes. At least, this would not be advisable for the Zambian drafter. This cursory review of the attitude by the Zambian Courts with regard to marginal notes shows that the notes are useful when interpreting statutes. Yes, the true meaning of a provision will

---

<sup>5</sup> 2021/CCZ/003

<sup>6</sup> CAZ/08/430/2023

be deciphered from the wording of the provisions but the courts may still call in aid marginal notes to give full effect to legislation. Therefore, apart from ensuring that statutes are correctly drafted, it is incumbent upon legislative drafters to carefully draft them despite their lack of inherent legislative value.